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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,941	10/21/2003	Matthew T. Adams	13563	4028

7590 12/28/2006  
ORUM & ROTH  
53 W. JACKSON BLVD  
CHICAGO, IL 60604

EXAMINER
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DICUS, TAMRA

ART UNIT	PAPER NUMBER
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1774

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/28/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/689,941

Applicant(s)

ADAMS ET AL.

Examiner

Tamra L. Dicus

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,9-11 and 30-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,9-11 and 30-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The 112 first and second paragraphs are withdrawn due to Applicant's amendments.

The Examiner acknowledges cancellation of claims 2, 6-8, and 12-29.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, 30, and 35-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

To claim 1, "the media" lacks antecedent basis.

To claim 1, it is not clear if ~~there~~ the resin material is a part of the adhering intent or the composite material or the medium.

To claim 4, "the layer of the resin material" at line 3 is not clear which one this refers especially when using the language "further comprising" (e.g. the resin material in claim 1, or the resin material covering the mesh carrier in claim 4). The structure could be resin 1/mesh/resin 2 /composite or mesh/resin/composite.

To claims 4, 30, and 36, it appears something is missing after "one of translucent or transparent". It is also not clear if the mesh carrier is transparent on its own or it is the resin that is transparent.

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Claim 35 includes “Kevlar, Kevlar-epoxy, Kevlar-polyester”. Trademarks or trade names are used to identify a source of goods, and not the goods themselves. See MPEP 2173.05(u). Also, the use of trademarked terms in claims does not identify or describe the goods associated with the trademark or trade name. Replacement of trademarked terms with a generic description is advised. Further the hyphenated terms are indefinite as to what material it is, epoxy, polyester, or a blend.

To Claims 30 and 36, it is unclear as what is intended by the language “and the mesh carrier with the mesh carrier with the coat of resin”.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,3-5,9-11 and 30-39 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of copending

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Application No. 10/622,559 (US PGPUB 2004/0091647 A1 to Adams et al.) in view of Sideman et al.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are to two different ink layers overlapped on the porous woven mesh. However, Sideman teaches a transfer sheet of textile substrates and in form of a tape (for adhering) having overlapping ink layers of black (dark), yellow, blue, and red (lights) from heat transfer printing (2:30-68, FIG. 3 and associated text, 5:35-43, 6:1-5, 6:55-68, Example 2). The inks can be imprinted in a variety of designs or patterns or solid colors.

It would have been obvious to one having ordinary skill in the art to have modified Adams to include overlapping ink as claimed because Sideman teaches the ink layers yields a variety of designs, a bar code is within the design feature.

This is a provisional obviousness-type double patenting rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Evaluations of level of ordinary skill in the art requires consideration of factors such as various prior art approaches employed, types of problems encountered in the art, rapidity with which innovations are made, sophistication of technology involved, educational background of

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those actively working in the field, commercial success, failure of others, and the inventor's educational level.

The "person having ordinary skill" in this art has the capability of understanding the scientific and engineering principles applicable to the claimed invention. The references of record in this case reasonably reflect this level of skill.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sideman et al. in view of Asada et al.

Sideman teaches a transfer sheet of textile substrates and in form of a tape (for adhering) having overlapping ink layers of black (dark), yellow, blue, and red (lights) from heat transfer printing (2:30-68, FIG. 3 and associated text, 5:35-43, 6:1-5, 6:55-68, Example 2). The inks can be imprinted in a variety of designs or patterns or solid colors.

Sideman does not teach the indicia is a bar code (instant claim 1).

Asada teaches a printed bar code on fiber cloth (Examples 1-2) for identification.

It would have been obvious to one having ordinary skill in the art to have modified the fabric of Sideman to include indicia is a bar code because Asada teaches its usefulness for identification (Examples 1-2).

Claims 1, 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asada et al. in view of Sideman.

Asada teaches a cloth having 50 yarns/cm and up to 1 billion yarns/cm<sup>2</sup> having a bar code on it (while not claiming the amount of instant claim 3, is an optimizable feature dependent

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upon how light one desires the fabric) (Example 1). It is submitted the optimal and/or claimed values of the respective material would have been obvious to the skilled artisan at the time the invention is made since it has long being held that such discovery, such as an optimum value of the respective result effective variable involves only routine skill in the art. In re boesch, 617 F.2d 272,205 USPQ 215(CCPA 1980).

Asada does not teach an overlapping two layer ink as per instant claim 1.

Sideman teaches a transfer sheet of textile substrates and in form of a tape (for adhering) having overlapping ink layers of black (dark), yellow, blue, and red (lights) from heat transfer printing (2:30-68, FIG. 3 and associated text, 5:35-43, 6:1-5, 6:55-68, Example 2). The inks can be imprinted in a variety of designs or patterns or solid colors.

It would have been obvious to one having ordinary skill in the art to have modified the fabric of Asada to include overlapping inks because Sideman teaches they provide printing especially for textiles (2:1-35, 5:35-43, 6:1-5, 6:55-68, Example 2).

Claims 1, 4-5, 9-11, 30-32 (new), 34 (new), and 36-39 (new) are rejected under 35 U.S.C. 103(a) as being unpatentable over Poirier et al. in view of Higuchi et al. and further in view of Sideman et al.

Poirier teaches a label of an acrylic resin (heated under heater 18 (heat curable resin, instant claim 5)) coated fabric (porous mesh) of polyester (instant claim 34) with a printed bar code (indicia) on it (Examples, FIG. 1 and associated text) (instant claims 1, 30, 36). Poirier teaches the fabric labels are attached to a composite (1:10-20, garment having a surface).

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Poirier teaches acrylic, but not that it is translucent or transparent (instant claim 4, 30, 36).

Higuchi teaches acrylic is transparent (5:40-55, patented claim 9).

It would have been obvious to one having ordinary skill in the art to have a transparent resin coat because Poirier teaches acrylic coatings and Higuchi teaches they are transparent (as cited above).

Poirier does not teach the printed bar code indicia is a dark ink/light ink overlapped on a mesh with resin adhesive as recited per instant claims 1, 9-11, 30-32, 36-39.

Sideman teaches a transfer sheet of textile substrates and in form of a tape (for adhering and adhesive, known to be of resins) having overlapping ink layers of black (dark), yellow, blue, and red (lights) from heat transfer printing (2:30-68, FIG. 3 and associated text, 5:35-43, 6:1-5, 6:55-68, Example 2). The inks can be imprinted in a variety of designs or patterns or solid colors.

It would have been obvious to one having ordinary skill in the art to have modified the combination to include a dark ink/light ink overlapped on a mesh with resin adhesive as claimed because Sideman teaches this ink combination can be in a variety of designs or patterns especially imprinted on synthetic textile fabrics and structured as a tape (2:30-35, 5:35-45, 6:55-68, Example 2).

Claims 3 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poirier et al. in view of Higuchi et al. and further in view of Sideman et al. and further in view of Asada.

The combination is relied upon above.



The combination does not teach the amounts of instant claims 3 and 33.

Asada teaches a cloth having 50 yarns/cm and up to 1 billion yarns/cm<sup>2</sup> having a bar code on it (while not claiming the amount of instant claim 3, is an optimizable feature dependent upon how light one desires the fabric) (Example 1). It would have been obvious to one having ordinary skill in the art to have modified the combination to have the recited amounts of threads/in since it has long being held that such discovery, such as an optimum value of the respective result effective variable involves only routine skill in the art. In re boesch, 617 F.2d 272,205 USPQ 215(CCPA 1980).

Claims 1, 4-5, 9-11, 30-32 (new), 34 (new), and 36-39 (new) are rejected under 35 U.S.C. 103(a) as being unpatentable over Poirier et al. in view of Higuchi et al. and further in view of Hill et al.

Poirier teaches a label of an acrylic resin (heated under heater 18 (heat curable resin, instant claim 5)) coated fabric (porous mesh) of polyester (instant claim 34) with a printed bar code (indicia) on it (Examples, FIG. 1 and associated text) (instant claims 1, 30, 36). Poirier teaches the fabric labels are attached to a composite (1:10-20, garment having a surface).

Poirier teaches acrylic, but not that it is translucent or transparent (instant claim 4, 30, 36).

Higuchi teaches acrylic is transparent (5:40-55, patented claim 9).

It would have been obvious to one having ordinary skill in the art to have a transparent resin coat because Poirier teaches acrylic coatings and Higuchi teaches they are transparent (as cited above).

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Poirier does not teach the printed bar code indicia is a dark ink/light ink overlapped on a mesh with resin adhesive as recited per instant claims 1, 9-11, 30-32, 36-39.

Hill teaches a printing arrangement on substrates having overlapping ink layers of black (dark), white, yellow, blue, and red (lights) (3:5-35, 4:30-40, 9:35-68, 11:39-50, 14:60-15:5). The inks can be imprinted in a variety of orders or patterns as illustrated in FIGS. 8A-9C and associated text.

It would have been obvious to one having ordinary skill in the art to have modified the combination to include a dark ink/light ink overlapped on a mesh of Poirier as claimed because Hill teaches this ink combination can be in a variety of designs or patterns (3:5-35, 4:30-40, 9:35-68, 11:39-50, 14:60-15:5, FIGS. 8A-9C and associated text).

Claims 3 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poirier et al. in view of Higuchi et al. and further in view of Hill et al. and further in view of Asada.

The combination is relied upon above.

The combination does not teach the amounts of instant claims 3 and 33.

Asada teaches a cloth having 50 yarns/cm and up to 1 billion yarns/cm<sup>2</sup> having a bar code on it (while not claiming the amount of instant claim 3, is an optimizable feature dependent upon how light one desires the fabric) (Example 1). It would have been obvious to one having ordinary skill in the art to have modified the combination to have the recited amounts of threads/in since it has long being held that such discovery, such as an optimum value of the respective result effective variable involves only routine skill in the art. In re boesch, 617 F.2d 272,205 USPQ 215(CCPA 1980).

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Claims 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poirier et al. in view of Higuchi et al. and further in view of Sideman et al. and further in view of Rankin et al.

The combination is relied upon above.

The combination does not teach a composite of Kevlar (instant claim 35).

Rankin teaches a garment comprising polyamide fibers such as Kevlar cloth for providing high tensile strength (Abstract, 3:10-40).

It would have been obvious to one having ordinary skill in the art to have modified the combination because Poirier suggests labels must identify the source of origin of garments and permanent care instructions for the garment (1:10-20) and Rankin teaches garments constructed of polyamide Kevlar® provides high tensile strength and heat resistance (1:10-20, 5:50-68, 7:5-30).

Claims 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poirier et al. in view of Higuchi et al. and further in view of Hill et al. and further in view of Rankin et al.

The combination is relied upon above.

The combination does not teach a composite of Kevlar (instant claim 35).

Rankin teaches a garment comprising polyamide fibers such as Kevlar cloth for providing high tensile strength (Abstract, 3:10-40).

It would have been obvious to one having ordinary skill in the art to have modified the combination because Poirier suggests labels must identify the source of origin of garments and permanent care instructions for the garment (1:10-20) and Rankin teaches garments constructed

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of polyamide Kevlar® provides high tensile strength and heat resistance (1:10-20, 5:50-68, 7:5-30).

### *References of Interest*

Reinert, Sr. teaches a launderable body suit of Kevlar that is light weight and flexible.

### *Response to Arguments*

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. Hill, now a tertiary reference, is still used to teach the printing ink orders as recited above. Sideman is also provided now to teach the ink orders.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

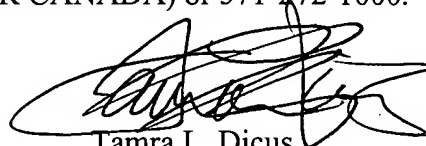
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is 571-272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

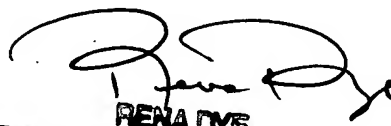
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tamra L. Dicus  
Examiner  
Art Unit 1774

December 19, 2006



RENA DYE  
SUPERVISORY PATENT EXAMINER  
AU 1774